



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

In re Application of  
Wayne E. Cornish et al  
Serial No. : 09/746,144  
Filed : December 21, 2000  
For : Superelastic Guide Wire with Locally Altered  
Properties

: DECISION ON PETITION  
: TO WITHDRAW  
: HOLDING OF  
: ABANDONMENT

This is a decision on petitioner's request received April 12, 2004, to review the holding of abandonment mailed June 12, 2003, for failure to respond to the Office action mailed November 20, 2002. The basis for the request is that applicant did not receive the Office action mailed November 20, 2002 nor the Notice of Abandonment mailed June 12, 2003. There is no fee required for this petition. It is noted that the request includes a showing that the Office in fact received a first submission of the instant request on July 2, 2003. The original, however, is not in the file.

In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53. The request filed April 12, 2004 includes all the above elements. The request is therefore GRANTED. Further, a review of the file shows, as correctly pointed out by applicants' representative, that the Office communications of November 20, 2002 and June 12, 2003 were mailed to an incorrect address. Any inconvenience is respectfully regretted.

Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner to have the records of the Office changed to reflect the proper correspondence address and for the remailing of the Office action of November 20, 2002, which action will set forth a new statutory period for response.

Summary: Holding of Abandonment Withdrawn.

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ak 4/14/04